

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

AMOCO AND MAMO EYOB
Respondents

Case Nos.: I-02-12067
I-02-12074

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). On May 20, 2002, the Government served a Notice of Infraction (No. 12067) upon Respondents Amoco and Mamo Eyob, alleging that they violated 21 DCMR 534.2 by failing to comply with requirements for proper and timely maintenance of a storm water management facility.¹ The Notice of Infraction alleged that Respondents violated 21 DCMR 534.2 on February 7, 2002 at 2350 South Dakota Avenue, N.E., and sought a fine of \$100.

Respondents did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code

¹ 21 DCMR 534.2 provides:

The owner of the property on which a storm water management facility has been constructed, or any other person or agent in control of such property, shall maintain the facility in good condition, and promptly repair and restore whenever necessary all grade surfaces, walls, drains, structures, vegetation, erosion and sediment control measures, and other protective devices.

§§ 2-1802.05 and 2-1802.02(e)). Accordingly, on July 2, 2002, this administrative court issued an order finding Respondents in default, and subject to the statutory penalty of \$100 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The order also required the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction (No. 12074) on July 11, 2002. Respondents failed to answer that Notice within 20 days of service. Accordingly, on September 18, 2002, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and subject to total statutory penalties of \$200 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.01(a)(2)(B). The Final Notice of Default also set October 17, 2002 as the date for an *ex parte* proof hearing pursuant to D.C. Official Code § 2-1802.03(b), and afforded Respondents an opportunity to appear at that hearing to contest liability, fines, or statutory penalties. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

Walter Caldwell, the charging inspector in this case, appeared at the October 17, 2002 hearing on behalf of the Government. There was no appearance of behalf of Respondent. Based upon the testimony at the hearing, my evaluation of credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

At all times relevant to this matter, Respondent Mamo Eyob served as the manager/owner of Respondent Amoco's gas station located at 2350 South Dakota Avenue, N.E. Based upon a

review of prior permits issued to Respondents, Inspector Caldwell determined that Respondents' last known business address is 2350 South Dakota Avenue, N.E., and I so find.

The Government served the first and second Notices of Infraction upon Respondents by certified mail, return-receipt requested at their last known business address. The second Notice of Infraction was in fact delivered to Respondents by the United States Postal Service ("USPS"), and there is no evidence in the record that the first Notice of Infraction was returned as undeliverable by USPS. Petitioner's Exhibit ("PX") 103. This administrative court's orders of July 2, 2002 and September 18, 2002, which included copies of the Notices of Infraction, were served upon Respondents by priority mail/delivery confirmation at their last known business address. According to USPS delivery confirmation receipts contained in the record, both of these orders were in fact delivered to Respondents' last known business address. Respondents have offered no explanation for their failure to answer the Notices of Infraction.

On February 7, 2002, Inspector Caldwell visited Respondents' gas station located at 2350 South Dakota Avenue, N.E., and observed conditions at Respondents' storm water management facility, such as a partially-degenerated filter bed, that required maintenance services.² PX 101. Respondents did not complete this maintenance within the 30-day grace period allotted by the Government.

III. Conclusions of Law

Because Respondents were served by mail at their last known business address, they received adequate notice of the charges and of the hearing date, as required by the Due Process

² Inspector Caldwell had previously visited this site on January 10, 2002, but at that time could not gain access to the storm water management facility adequate for inspection. PX 100.

Clause and the Civil Infractions Act. *See* D.C. Official Code §§ 2-1802.01 and 2-1802.05; *see also Dusenberry v. United States*, 122 S. Ct. 694, 698-702 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

By failing to maintain their storm water management facility in good condition, and by failing to promptly service that facility, Respondents violated 21 DCMR 534.2 on February 7, 2002. 21 DCMR 534.2. A fine of \$100 is authorized for a first violation of this regulation, and I will impose that fine without reduction. 16 DCMR §§ 3201.1(c)(1) and 3234.2(o).

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within 20 days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). Because the record contains no explanation for their failure to answer the first and second Notices of Infraction in this case, there is no basis for concluding that Respondents had good cause for that failure. Accordingly, a statutory penalty of \$200, in addition to the fine, shall be imposed without reduction.

IV. Order

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this _____ day of _____, 2002:

ORDERED, that Respondents Amoco and Mamo Eyob, who are jointly and severally liable, shall pay a total of **THREE HUNDRED DOLLARS (\$300)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 10/31/02

Mark D. Poindexter
Administrative Judge